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January 29, 1993

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JAN 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: MM Docket No. 92-262
Tier Buy-Trough Prohibitions

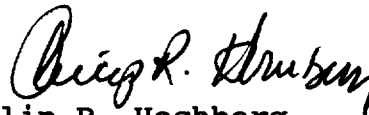
Dear Ms. Searcy:

Transmitted herewith on behalf of Encore Media Corporation are an original and ten (10) copies of its "Summary" (inadvertently omitted) and a corrected Page 14 to be associated with Attachment 1 to its "Reply Comments" in the above-referenced proceeding. (The corrected page contains a phrase including the word "commodities," in addition to supplying the missing line at the end of the page that did not print. We supplied this corrected page and summary in connection with MM Docket No. 92-266 (Rate Regulation) and had made those comments a matter of record as part of our Reply Comments in this proceeding.)

We apologize for any inconvenience to your staff in associating these pages into our filing.

If you have any questions, please contact the undersigned.

Very truly yours,



Philip R. Hochberg
Counsel for
ENCORE MEDIA CORPORATION

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SUMMARY

By using the statutory language, the Conference Report, and the legislative history, ENCORE urges the Commission to keep in the forefront in its deliberation the overall intent of the Cable Consumer Protection and Competition Act of 1992 to foster and encourage competition in all areas of the cable industry. Section 3 directs the Commission, in the absence of competition, to:

- (i) Establish tight regulatory guidelines for use by local franchising authorities to ensure that consumers are offered the lowest possible rate for the Basic Service Tier ("BST").
- (ii) Encourage cable operators to
 - a. offer their cable programming on an a-la-carte, per channel or per program ("PCPP") basis by placing no rate regulation on such service(s), even in the absence of competition, and
 - b. lower the barrier for consumers to access PCPP service(s) through the Act's provisions regarding anti buy-through and cost-based pricing of addressable converters provisions.
- (iii) Establish and enforce more benign guidelines to weed out cable operators with egregious rate behavior ("bad actors") for the provision of Cable Programming Service ("CPS") tier(s). CPS is defined as all services that are not BST or PCPP.

Except for the minimum content requirements of BST, the Act places no restriction whatsoever on the cable operator's usage of any video programming service in either BST, CPS or PCPP.

ENCORE calls on the Commission not to consider all cable channels as "commodities," without regard to the cost to cable operators, since, in accordance with the Act, expensive premium services may be placed in either BST or CPS. Furthermore, ENCORE recommends that the Commission use a multiplier of greater than 1.0, applied on a per channel or per group of channels basis, to CPS to create a "buffer zone" between "reasonableness" and "unreasonableness" in its development of a benchmark method adaptable for all channels and systems. The multiplier would separate the tight control required of BST and the more benign regulation for CPS tiers.

ENCORE urges that any cable operator-supplied equipment that is readily available in the local retail market not be subject to any rate regulation to comport with the Act's stated policy to foster competition. It is also in keeping with Section 17 of the Act.

Finally, ENCORE argues that cable operators, under the Act, can offer consumers PCPP without first subscribing to BST, counter to the Commission's tentative findings. ENCORE believes that when faced with competition, such as DBS, which is not required to offer BST, cable operators must be able to compete on an equal footing.

the channel to the cable operator. We believe this "universal" approach -- treating all channels as "commodities" -- is inappropriate under the Act.

As pointed out in paragraph 3, above, that the Act would assign any video programming to the type of cable service, (BST, CPS, or PCPP) solely on how a cable operator markets such programming to the consumer in that system. To the extent that cable operators are free to use any video programming in fashioning a diverse offering to the public, a traditional view that a given video programming service should be in BST, CPS, or PCPP type of cable service is simply not reflective of the current marketplace and certainly would not be the case pursuant to the practices required under the Act.

In the marketplace today, a growing trend is to market ENCORE both as an a-la-carte service (PCPP) and as part of a new or existing tier (CPS) with other video programming services which more traditionally have been dubbed as "basic cable programming"¹⁹ such as Sci-Fi, Comedy Central, The Learning Channel, etc., on the same cable system. The rationale to include a "premium service" such as ENCORE with traditionally "basic cable channels" in a "hybrid tier" is to provide a locomotive to increase consumer acceptance (penetration) at an affordable price which would permit cable operators to invest in

¹⁹Pursuant to the environment created by the 1984 Act, many systems carry video programming as "basic cable service" that under present conventional wisdom of the 1992 Act would, upon re-tiering, be CPS.